

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance.

Status of the Claims

Claims 1 is amended to include "leukemia" as previously recited in claim 4, and inadvertently omitted in the previously filed amendment. It is respectfully noted that the remarks argued both leukemia and lymphoma and made reference to the inclusion of claim 4 in claim 1, but only lymphoma appeared in claim 1.

Claims 1, 9, 10, 14, and 15 remain in the application.

Claim Rejections-35 USC §112

Claim 1 was rejected under 35 USC §112, second paragraph, for being indefinite due to an improper Markush group recitation. Claim 1 is amended to remove the Markush language, and is now definite.

Therefore, withdrawal of the rejection is respectfully requested.

Claims 1, 9-10 and 14-15 were rejected under 35 USC §112, first paragraph, for both not being enabled and not complying with the written description requirement. These rejections are traversed for the reasons discussed below.

The previously held position was maintained, i.e., that the present specification was insufficient to support the present claims where o-ATP is active against lymphoma.

Moreover, the data presented in the previously filed Declaration Under Rule 132 was not considered sufficient to support the present claims, e.g., the treatment of a particular disease condition in a host.

The Examiner's attention is directed to the new Declaration Under Rule 132 provided in the appendix. Mice were injected with RMA cells were derived from Rausher leukemia virus induced T-cell lymphoma RBL-5 of B6 origin, and the mice were treated with oATP. The data shows that local continuous treatment with oATP significantly slows tumor growth. The data further suggests that elevated concentrations of oATP are able to induce apoptosis of these cells.

Accordingly, this new Declaration Under Rule 132 and the previously filed Declaration under Rule 132 of January 12, 2009 support a method of treating lymphoma or leukemia as currently claimed.

Therefore withdrawal of these rejections is respectfully requested.

Claim Rejections-35 USC §102 and 103

Claim 1, 9-10 and 14-15 were rejected under 35 USC 102(b) as being anticipated by and separately rejected under

35 USC 103(a) as being unpatentable over CORY et al. from PTO-820, ref R ("CORY"). These rejections are respectfully traversed for the reasons below.

CORY discloses the Ehrlich tumor (ET). However, as noted previously, this tumor is neither lymphoma, as asserted by the Official Action, nor leukemia.

This position is supported by the new web pages cited in the Official Action. Indeed, the pages include a heading of "Ehrlich Tumor Carcinoma" and a description of a "transplantable, poorly differentiated malignant tumor which appeared originally as a spontaneous breast carcinoma in a mouse". (Emphasis added.)

Moreover, as previously discussed in the Amendment filed June 18, 2008, Ehrlich tumor (ET) used by CORY is a "low metastatic spontaneously occurring murine mammary carcinoma", as evidenced by the article published in Experimental Hematology (1999), which was enclosed with the Amendment of June 18, 2008.

Thus, one of ordinary skill in the art would not have expected oATP, which was reported by CORY to inhibit the enzyme ribonucleotide reductase in cell-free extracts of a carcinoma tumor to inhibit lymphoma tumor, as asserted in the Official Action, in vivo.

Therefore, the claims are neither anticipated by nor rendered obvious over CORY, and withdrawal of the rejection is respectfully requested.

Conclusion

In view of the amendment to the claims and the foregoing remarks, this application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis is respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our credit card which is being paid online simultaneously herewith for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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